

# EXHIBIT 20

1 SUPREME COURT OF THE STATE OF NEW YORK  
 2 COUNTY OF NEW YORK - CIVIL TERM - PART 48

3 - - - - -X

4 CHARIF SOUKI, Individually, AVR AH LLC,  
 5 KARIM SOUKI, CHRISTOPHER SOUKI, and LINA  
 6 SOUKI RIZZUTO, as Trustees of the SOUKI  
 7 FAMILY 2016 TRUST, and STRUDEL HOLDINGS  
 8 LLC,

INDEX NUMBER:  
 651164/2023

9 Plaintiffs,

10 - against -

11 NINETEEN77 CAPITAL SOLUTIONS A LP,  
 12 BERMUDEZ MUTUARI, LTD, WILMINGTON TRUST  
 13 NATIONAL ASSOCIATION, and UBS O'CONNOR  
 14 LLC,

15 Defendants.

16 - - - - -X

17 Proceedings Via Microsoft Teams  
 18 New York, New York  
 19 May 1, 2023

20 B E F O R E :

21 HONORABLE ANDREA MASLEY,

22 JUSTICE OF THE SUPREME COURT

23 A P P E A R A N C E S :

24 HARRIS, ST. LAURENT & WECHSLER LLP  
 25 Attorneys for the Plaintiffs  
 40 Wall Street, 53rd Floor  
 New York, New York 10005  
 BY: MEGAN DUBATOWKA, ESQ.

YETTER COLEMAN LLP  
 Attorneys for the Plaintiffs  
 811 Main Street, Suite 4100  
 Houston, Texas 77002  
 BY: TIMOTHY S. McCONN, ESQ.

1 A P P E A R A N C E S: (continued)

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ORRICK, HERRINGTON & SUTCLIFFE LLP

3

Attorneys for the Defendants

51 West 52nd Street

4

New York, New York 10019

BY: DARRELL S. CAFASSO, ESQ.

5

LAURA METZGER, ESQ.

HARRY F. MURPHY, ESQ.

6

ZACH KUSTER, ESQ.

MEREDITH DAWSON, ESQ.

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ANNE BROWN, RPR  
SENIOR COURT REPORTER

## Proceedings

1 THE COURT: At 2:33, in the matter of Souki against  
2 Nineteen77 Capital Solutions A LP.

3 Who is speaking for plaintiff?

4 MS. DUBATOWKA: Good afternoon, Your Honor.

5 This is Megan Dubatowka with Harris, St. Laurent &  
6 Wechsler. My co-counsel, Tim McConn of Yetter Coleman --  
7 (Reporter clarification.)

8 THE COURT: Yeah. Thank you, Ms. Brown.

9 I'll ask everyone to turn off their microphones,  
10 unless you are speaking.

11 MS. DUBATOWKA: And, Your Honor, Tim McConn will be  
12 speaking on behalf of the plaintiffs.

13 THE COURT: Okay. Mr. McConn, can we just test  
14 your microphone, because it's hard to hear Ms. Dubatowka.

15 MR. MCCONN: Yes, Your Honor. Can you hear me  
16 okay?

17 THE COURT: Oh, yeah. You're fine.

18 Okay. And who is speaking on behalf of some of the  
19 defendants, the Nineteen77 defendants?

20 MR. CAFASSO: Good afternoon, Your Honor.

21 This is Darrell Cafasso from Orrick, Herrington &  
22 Sutcliffe. I will be speaking on behalf of all defendants  
23 this afternoon.

24 THE COURT: Where are you? Are you in the  
25 conference room?

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1 MR. CAFASSO: Correct. I'm waving. Do you see me?

2 THE COURT: Oh, okay. Got it. All right.

3 Everyone else needs to have their microphones off. And  
4 yeah, now I have you. Thank you.

5 So this is Plaintiffs' motion for a Preliminary  
6 Injunction. Mr. Cafasso, who else is with you?

7 MR. CAFASSO: With me, Your Honor, I have my  
8 partner, Laura Metzger, who has also filed an appearance in  
9 this action, and other colleagues at Orrick, Harry Murphy,  
10 Zach Kuster, and Meredith Dawson.

11 THE COURT: Okay. Everyone who is on should email  
12 when we're done, Ms. Brown with their names and their  
13 addresses. And their affiliations and who you represent and  
14 what law firm you work for. Okay?

15 MR. CAFASSO: Okay.

16 THE COURT: So everyone who's on. Although, I  
17 understand we also have -- members of the public are  
18 observing today as well.

19 Okay. So, Mr. McConn, you want to get us started.

20 MR. McCONN: Your Honor, I'd be happy to. Can you  
21 still hear me okay?

22 THE COURT: Yes.

23 MR. McCONN: If it's okay with the Court, I'd like  
24 to use a PowerPoint to help guide us through the discussion.

25 THE COURT: Did you share it with your adversary?

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1 MR. McCONN: I did not, Your Honor. I didn't know  
2 that I was supposed to. I'm happy to do so right now.

3 THE COURT: Well, welcome to my courtroom. And  
4 please read my rules in the future before you ever come in  
5 my courtroom again --

6 MR. CAFASSO: I missed that one, Your Honor. I  
7 apologize.

8 THE COURT: -- number one. Number two, courtesy,  
9 to me and to your adversary. So the answer is no.

10 MR. McCONN: Okay. Your Honor, I apologize. I was  
11 not trying to hide anything. That is my fault for not  
12 knowing the rules.

13 With that, Your Honor, if I may, may I proceed?

14 THE COURT: Please.

15 MR. McCONN: Thank you, Your Honor.

16 So, Your Honor, as you said, we are here today on  
17 the plaintiffs' motion for a Preliminary Injunction. I  
18 represent all of the plaintiffs, including Mr. Souki, and  
19 then the remainder of the plaintiffs are entities that are  
20 affiliated with Mr. Souki.

21 What we're asking today, Your Honor, is for the  
22 Court to simply maintain the status quo with respect to the  
23 condition of the assets and the collateral that will be the  
24 subject of the discussion and that are the subject of the  
25 briefing that's been filed with the Court.

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1 We are talking about three elements here, as Your  
2 Honor well knows. We are talking about likelihood of  
3 success on the merits. We think we can show likelihood of  
4 success on the merits with respect to various claims,  
5 including our claim that the defendants breached their duty  
6 to use good faith and commercial reasonableness, as well as  
7 our declaratory judgment claim and our fraud claim.

8 And as Your Honor well knows, the law in New York  
9 -- with respect to the element, the first element,  
10 likelihood of success -- a prima facie showing of a  
11 reasonable probability of success is sufficient. And so  
12 that's number one.

13 Number two, the irreparable harm element. And of  
14 course, we're talking about three pieces of collateral. A  
15 family residential ranch, a family-owned --

16 THE COURT: Anything about the conflict in the  
17 record between whether it is the family home? I have your  
18 client saying many different things. So what am I to  
19 believe?

20 MR. McCONN: Thank you, Your Honor, for the  
21 question. And, yes, ma'am. I understand that when we filed  
22 our original Complaint, we identified him as a Texas  
23 resident. And as you'll see in his supplemental affidavit  
24 that we filed on Friday, we clarified that he was a Texas  
25 resident up until last year. And because of how much time

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1 he's now spending back in Colorado, he is now a Colorado  
2 resident. But at all times relevant to the discussion, Your  
3 Honor, his only home in the United States was the ranch and  
4 is the ranch in Colorado.

5 So even when he was a Texas resident and spending  
6 time here in Houston -- he'd live in a hotel or spend time  
7 in a hotel -- his only home is the ranch. And that is the  
8 record in the case. And we've clarified that now in Mr.  
9 Souki's supplemental affidavit.

10 THE COURT: Mm-hmm. Okay. Did you want to  
11 proceed?

12 MR. McCONN: I would, Your Honor. I just wasn't  
13 sure if you had another question.

14 THE COURT: Oh, believe me. When I have a  
15 question, you'll know.

16 MR. McCONN: Thank you, Your Honor.

17 THE COURT: Yeah. It's my courtroom. I'm not  
18 afraid to ask questions in my courtroom, but thank you so  
19 much for the invitation.

20 MR. McCONN: Thank you, Your Honor. I'll keep  
21 going. I want to make good use of the Court's time.

22 So the second element is the irreparable harm.  
23 We're talking about the ranch. We're talking about the  
24 family-owned company, Ajax Holdings. And we're talking  
25 about the sailboat that is a rare and unique piece of



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1 personal property. Those are the three elements, Your  
2 Honor. I'll just get right to it.

3 So a quick background to help guide the Court.  
4 2017, Mr. Souki enters into the first loan with the  
5 defendants. That loan was worth \$50 million.

6 THE COURT: I mean, the bottom line is we're  
7 talking about \$138 million loan, correct?

8 MR. McCONN: We are talking -- when you add up all  
9 the interest that they say has accrued, that is correct,  
10 Your Honor.

11 THE COURT: Okay.

12 MR. McCONN: That was never the balance at any  
13 given point in time, but that is the total.

14 THE COURT: I don't really care. But that's the  
15 amount I have to deal with.

16 MR. McCONN: Okay. So we're dealing with that very  
17 sizable loan. It came in two tranches in 2017 and 2018.  
18 All these pieces of property that we're talking about were  
19 pledged as collateral. Given the value of that collateral,  
20 the defendants were certainly more than over-collateralized.

21 The final thing I'll say about that first agreement  
22 in 2017 is that when we signed the loan agreement, the  
23 defendants also required Mr. Souki to sign an account  
24 control agreement, which gave them the right to exercise  
25 control over the Tellurian stock, if they so chose. So that

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1 was 2017.

2 2018, there's a supplemental loan agreement. We  
3 get to the amount that the Court described.

4 In 2019, the defendants entered into another loan  
5 agreement with the company that Mr. Souki co-founded,  
6 Tellurian. That was for \$75 million. And so by the time  
7 you get to the end of 2019, the defendants are very heavily  
8 exposed to Tellurian under the two loans of Mr. Souki and  
9 the loan with Tellurian itself.

10 In early 2020, this becomes a problem. And the  
11 reason it becomes a problem is because two very significant  
12 things happen in the market and it severely impacted the  
13 Tellurian stock cost.

14 The first is they ran into an issue with a  
15 potential customer, a company called Petronet out of India.  
16 The way these LNG facilities work, Your Honor, is they can't  
17 be billed until they get the financing in place. You can't  
18 get the financing note for these multi-billion-dollar  
19 facilities until customer contracts are signed. Petronet  
20 was going to be one of the primary customers of Tellurian,  
21 and in February of 2020, they announced that they were  
22 backing away from the table. That sent the stock price down  
23 very significantly.

24 The second thing that happened was in March of  
25 2020, COVID occurred, and that just blew up the oil and gas

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1 markets around the world. That also strained very heavily  
2 -- strained the Tellurian stock price.

3 So it's with that context, Your Honor, that in the  
4 spring of 2020 when this was happening, the defendants  
5 approached Mr. Souki. At that time, Mr. Souki was the  
6 chairman of the board of Tellurian, but he was not an  
7 officer. He was not actively involved in the day-to-day  
8 business of the company. But given their exposure to the  
9 company at that point and the problems that were going on,  
10 the defendants asked -- really, pleaded with Mr. Souki to  
11 come back, re-engage with the company, and take over so that  
12 he could ensure that the company -- that he could right the  
13 ship at Tellurian. And in doing so, help get these loans  
14 paid off to the defendants, including the loan that  
15 Tellurian had.

16 And what they did is they asked him -- and this is  
17 in his affidavit. They asked him to come back, get back in  
18 charge, re-engage. And if he did so, they would be very  
19 flexible in their approach to his -- the repayment of his  
20 loan. They told him to focus on getting the Tellurian loan  
21 paid, and if he did so, they would not touch his stock, his  
22 Tellurian stock that was pledged as collateral under his  
23 own --

24 THE COURT: And where is that written agreement?

25 MR. McCONN: It's not, Your Honor. I fully confess

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1 that that is -- it's all oral. There are emails that talk  
2 about it, but there's no written agreement that says that.  
3 We don't dispute that.

4 But what we do say, Your Honor, is that that  
5 assurance, that promise -- what we call an agreement or  
6 commitment by the defendants. It spelled out what the  
7 parties understood would be the reasonable time to sell his  
8 stock if it ever had to be sold to pay off his debt -- it  
9 would be after Tellurian achieved certain milestones in the  
10 future. That's what they understood would be the  
11 commercially reasonable thing to do. So that was 2020.

12 And as a result of that, Mr. Souki re-engaged. He  
13 came back in as the executive chairman of the company.  
14 Devoted all of his time and resources to righting the ship  
15 at Tellurian. Getting the Tellurian loans paid off. And in  
16 doing so, he did enter into a written agreement -- actually  
17 two -- with the defendants. Both called bridge agreements.

18 The bridge agreements essentially were forbearance  
19 agreements that lasted for about a year, and during that  
20 period, they would not touch his stock. But it also said  
21 that at the end of that year when the agreements expire,  
22 they would have the right to sell his stock if certain  
23 things happened. It said that we couldn't provide the  
24 material nonpublic information so that it wouldn't impact  
25 their ability to sell the stock. But it also said that if

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1 they, the defendants, decided to move forward with selling  
2 the stock at any point after that, they would have to take  
3 commercially reasonable steps not to disrupt the stock  
4 price. That was the agreement they made in writing.

5 On that same day, May 5th of 2020, when we entered  
6 into those bridge agreements, the defendants also exercised  
7 their right to take exclusive control of Mr. Souki's stock.  
8 This is a letter attached as Exhibit 2 to Mr. Souki's  
9 supplemental affidavit.

10 THE COURT: What's the NYSCEF number?

11 MR. McCONN: Pardon me?

12 THE COURT: What's the NYSCEF number?

13 MR. McCONN: I don't -- I don't know, Your Honor.  
14 I'll have to find that for you.

15 THE COURT: Again, please read my rules. Please be  
16 prepared with NYSCEF numbers. I have 400 cases. Would you  
17 like to know how many Exhibit 2s I looked at today?

18 MR. McCONN: I'm sure it was a lot. I apologize.

19 THE COURT: Would you like to see how many  
20 Exhibit 2s are in this file? "Exhibit 2" -- useless.  
21 Completely useless. Thank you.

22 MR. McCONN: I apologize. Your Honor, I'll get you  
23 that number.

24 THE COURT: Thanks so much.

25 MR. McCONN: I apologize.

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1 So Exhibit 2 to Mr. Souki's supplemental affidavit  
2 is Index Number 651164/2023.

3 THE COURT: That's the Index number of the case.  
4 Thank you so much. The NYSCEF number is the document number  
5 in the docket.

6 MR. McCONN: I apologize. It's 104, Your Honor.

7 THE COURT: Got it. Thank you.

8 MR. McCONN: You're very welcome. Apologies.

9 So the NYSCEF -- sorry, NYSCEF Number 104 is  
10 Exhibit 2 to this supplemental affidavit. This supplemental  
11 affidavit is 102. And that document clearly shows, Your  
12 Honor, that on May 5, 2020, the defendants exercised their  
13 right under that account control agreement that we talked  
14 about earlier, and they sent a letter to Mr. Souki saying,  
15 "We now have exclusive control over your stock," and under  
16 the plain language of the agreement, the account control  
17 agreement.

18 At that point, Mr. Souki ceased having any control  
19 over his stock. He could not do anything about it,  
20 including selling it. Only Defendants had the right at that  
21 point, or the ability to sell the stock. They were the only  
22 ones who could do so. So that's in May of 2020.

23 For the rest of 2020 and early 2021, things seemed  
24 to be going okay. That was -- Mr. Souki was running  
25 Tellurian. He was raising money for the company. He

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1 eventually helped the company pay off both the loan to the  
2 defendants as well as another loan. It really helped the  
3 company. The stock price stabilized and it started to  
4 recover. That gets us into the spring of 2021.

5 Around the spring of 2021, in March or so of 2021,  
6 the bridge agreements expire. The loans have now been paid  
7 off. The Tellurian loan has been paid off. So the only  
8 loan that's left outstanding are Mr. Souki's personal loans,  
9 which he was told they would be very flexible in how they  
10 would deal with it. And they wouldn't touch his Tellurian  
11 stock until after Tellurian achieved these milestones.  
12 Well, that promise went out the window.

13 And again, we understand. It's not -- it was a  
14 promise. It was made. It went out the window. And in  
15 March of -- sorry, May of 2021, the defendant started  
16 insisting that Mr. Souki sell his stock, his Tellurian  
17 stock; the 25 million shares that he pledged as collateral  
18 under the loan.

19 At that point and at all points going forward, Your  
20 Honor, why they were asking him or insisting that he sell  
21 the stock is beyond us. Because at that point, not only did  
22 he have other kind of SEC-type restrictions on him from  
23 selling, he didn't have the ability to sell. The Account  
24 Control Agreement gave the defendants the exclusive right to  
25 do that. Yet, during that time, they were asking Mr. Souki

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1 to sell his stock.

2 They were also insisting that he sell his ranch.  
3 And so at that point, even though it's his residence, his  
4 home, his children live there, he made the decision. He  
5 knew that he had obligations to the defendants. And so he  
6 made the decision to ask his children to move off the ranch.  
7 He would put it on the market and try to sell it so he could  
8 pay off the loans, which he couldn't do using the stock  
9 because they had exclusive control. So that -- that is  
10 2021, spring, moving forward.

11 But once we get into the next 15 to 18 months, Your  
12 Honor, there are repeated windows of time -- days, weeks of  
13 time -- wherein the value of the stock, the Tellurian stock,  
14 exceeded his debt. We know from what they filed in the  
15 papers that they believe his debt was \$119 million in April  
16 of 2022.

17 What we know, Your Honor, this is all public  
18 information and it's included in Mr. Souki's affidavits.  
19 That the value of his shares in June of '21, November of  
20 '21, all throughout April and into May of '22 -- in March,  
21 sorry -- further in May of 2022 and then again in August of  
22 '22. At all of those points in time, the value of his  
23 shares that they controlled were more than his debt.

24 They had exclusive control of his shares. They had  
25 the right to sell his shares. For whatever reason, they



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1 were insisting that he do it, but they wouldn't do it. But  
2 they knew that that was the right time to sell it because  
3 they were asking him to do it. Maybe they forgot they had  
4 the right to do it or they sole right to do it, I don't  
5 know. But for whatever reason, over that many months of  
6 time when they had reasonable opportunities to sell, they  
7 did not do so.

8 And at one point, Your Honor -- and this is in Mr.  
9 Souki's supplemental affidavit as well, which again is  
10 NYSCEF Doc Number 102. At some point in late 2021 and early  
11 '22, as the defendants continued, repeatedly insisting that  
12 Mr. Souki sell during these windows when the stock price  
13 was -- the value was more than the debt, he finally said --  
14 his representative finally said, "Look, guys. We can't do  
15 it. And if you don't believe me, you got to sell. You do  
16 it." And they still didn't do it. And so this is going on  
17 repeatedly throughout 2021 and 2022.

18 And during that same time frame -- it's somewhat  
19 relevant to what we're talking about here -- they're also  
20 insisting that he sell his ranch. And he tried. And he  
21 made several good faith efforts to do so. In 2021, he was  
22 able to sell two of the properties -- actually, three of the  
23 properties on the ranch. And it took a lot of bidding and  
24 negotiating and working with the defendants, who were being  
25 nonresponsive to him, to get them to finally agree to

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1 release the lien that they had over those particular  
2 properties under these loans. But they did. No dispute  
3 that they finally did. But at that point in time, as of  
4 late 2021, they then were the only lien holder on his ranch.  
5 They had cleared out the other lien holder, the other  
6 mortgagor.

7 And at that point they had a first lien position,  
8 and at that point, throughout the rest of '21 and into  
9 '22 -- all of '22, they refused multiple proposals by Mr.  
10 Souki to either sell off parts of the ranch to other  
11 bidders, including his family trust. They rejected  
12 refinancing proposals that he had made on parts of the loan  
13 using the ranch. And so this continues repeatedly. And  
14 they're still not selling his share. None of this would  
15 have been necessary on the ranch if they would've just taken  
16 their own advice and used the exclusive right they had to  
17 sell the shares.

18 They wouldn't even have had to sell all the shares,  
19 Your Honor. They could have sold a large portion of them  
20 and wiped out the entire debt. And for whatever reason,  
21 they continued not to do so.

22 And so, Your Honor, we get to the end of 2022. And  
23 I appreciate you indulging me. I know I'm going through a  
24 lot of the background here, but I think it's important  
25 context.

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1 In late 2022, after this two years of inaction and  
2 interference, the defendants began to foreclose on some of  
3 the collateral.

4 The first piece of collateral they foreclosed on  
5 was the sailboat, the Tango sailboat. We got notice of this  
6 three days before Christmas in 2022. And we had never  
7 received any further information from the defendants, or the  
8 receiver they appointed as to what is going on with the  
9 Tango. We have asked. We've asked repeatedly. And the  
10 receiver that they appointed for selling that boat has  
11 repeatedly refused to give us any information.

12 But what Mr. Souki has learned through  
13 acquaintances out in the market cause he knows a lot of  
14 people who deal with these sailboats, is that the boat has  
15 been listed for sale for a fire-sale price, using a  
16 marketing process that doesn't come close to complying with  
17 the way it's done in the industry.

18 And the defendants, notably, do not dispute any of  
19 this. If you look at their briefing, their response, or the  
20 opposition and the affirmation that was attached to it,  
21 there's no dispute about Mr. Souki's testimony with respect  
22 to how the Tango that's being marketed -- or the fact that  
23 he is not being provided any information whatsoever. So  
24 that's the Tango. That's at the end of '22.

25 At the beginning of this year, in February of '23,

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1 they then seized the Tellurian shares. They already had  
2 exclusive control over the shares. They took a step in  
3 seizing the shares -- actually moving, directing the broker  
4 to physically -- not physically, but electronically move the  
5 shares of Mr. Souki's account to the defendants' account.

6 Now this is just a ministerial act because, as I've  
7 said a few times now, at that point they controlled the  
8 shares. But that was the first time, in February of '23,  
9 that they actually took their own advice and used the  
10 exclusive right that they had and went ahead and started  
11 selling the stock. But they did so when the stock --  
12 instead of when it was at 5 and \$6 during those repeated  
13 windows that I was telling you about earlier, at this point  
14 it was trading below \$2. It had been trading right around  
15 \$2 going back to November or so, maybe October. But by the  
16 time they seized the shares on February 6th and 7th, the  
17 stock is trading below \$2.

18 And yet that next day, February 8th, I believe,  
19 they started selling the stock. And they didn't just start  
20 selling it, Your Honor. They dumped it on the market.

21 At that point in time, the average volume of  
22 Tellurian stock being sold every day was roughly 10 to  
23 \$12 million -- or 10 to 12 million shares, I'm sorry.  
24 Whereas back in 2021 and early 2022, during those windows of  
25 time that I mentioned to, Your Honor, back during those

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1 periods, the shares were trading sometimes 80 to 90 million  
2 per day. In April of '22, it got up to 230 million shares  
3 being traded in one day. Those were the times to sell.

4 Yet, for whatever reason, they dumped his shares on  
5 the market when it was at a two-year low, and the trading  
6 volume was such that if the executive chairman's gets dumped  
7 into the mix, it's going to move the price dramatically.  
8 And yet they did it anyways. And the very first day, they  
9 dumped almost 2 million of his shares on the market, roughly  
10 15 percent or so of the total volume for that day. It drove  
11 the price down by 10 percent, not surprisingly.

12 We then asked them -- we pleaded with them -- to  
13 not sell any more, but if they were going to, to use an  
14 industry-compliant methodology, which would be essentially  
15 using these algorithms that traders use to make sure that  
16 they're only putting 3 to 4, maybe 5 percent into the market  
17 each day and as the market moves, the algorithm will adjust.  
18 They clearly didn't do that at least in the first week cause  
19 they kept dumping large, humongous volumes on to the market  
20 to the point where at the end of the first six business  
21 days, they had driven the price down by, I want to say  
22 nearly 25 to 30 percent.

23 So they ignored our advice. They ignored our  
24 pleas. They finished out selling all 25 million shares over  
25 the next six weeks or so. For the 25 million shares that

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1 they could've received \$158 million for back in April of  
2 2022, they received 37 million.

3 And that's also at a time when his debt -- because  
4 of their interference and their inaction, Mr. Souki's debt  
5 had increased to, according to them, \$135 million. So they  
6 sold his shares a time when the volume of those shares was  
7 almost a hundred million dollars less than the total debt.  
8 So that gets us to this lawsuit.

9 March 6th we filed a lawsuit. A week later,  
10 March 13th, they react by initiating foreclosure on the  
11 ranch, which they've now scheduled for July of this year.  
12 Two days later, they react by initiating foreclosure on the  
13 family company, Ajax Holdings. They scheduled that for  
14 June 13th. So only six weeks from today. And it was  
15 because of that that we then moved for a Preliminary  
16 Injunction on April 3rd.

17 Your Honor, as I mentioned earlier, the primary  
18 claim that we are focused on today with respect to  
19 likelihood of success on the merits is the duty that they  
20 breached with regards to commercial reasonableness.  
21 Commercial reasonableness is required in the disposition of  
22 every piece of collateral under the New York UCC, which is  
23 part of this contract. The contract is made subject to New  
24 York law. No dispute about that. Sections 9-6.1 -- sorry,  
25 9-610 of the New York UCC, Sub B, requires commercial

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1       reasonableness in every aspect of a disposition of  
2       collateral, including the method, manner, place and time.

3               The Courts have defined commercial reasonableness  
4       in this context to mean things like a good faith attempt to  
5       dispose of the collateral to the parties' mutual best  
6       advantage, or what a reasonable business would have done to  
7       maximize the return on a collateral. Those are the *Central*  
8       *Budget v. Garrett* case and the *matter of Excello Press* cases  
9       that we've cited in our briefing. And this is a duty --  
10      it's a requirement, Your Honor -- that can not be waived.  
11      Section 9-602 Sub G of the New York UCC says that expressly.  
12      It can not be waived.

13             So whatever discretion the loan agreements provide  
14      the defendants, whatever rights they have vis-a-vis Mr.  
15      Souki and the plaintiffs under these loan agreements, it's  
16      all subject to this duty to use commercial reasonableness  
17      under the UCC that can not be waived. And they don't  
18      dispute that in their papers.

19             THE COURT: All right. So why are we talking about  
20      waiving? Are they even trying to -- they're not even asking  
21      to waive it.

22             MR. McCONN: Your Honor, you're right. They're not  
23      asking to waive it. But they're making several arguments  
24      about how provisions in the agreement show that they have  
25      all kinds of discretion and they can essentially do whatever

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1 the heck they want with respect to collateral. And that's  
2 simply not true.

3 So I know they're not saying "waiver," but they're  
4 making an argument that implies that there is no duty to use  
5 commercial reasonableness under this contract, and by New  
6 York law there clearly is. And for that matter, Your Honor,  
7 they also expressly agreed to use commercial reasonableness  
8 under the bridge agreements in May of 2020.

9 Remember we talked about the provision that says  
10 that if they're going to sell the Tellurian stock, which  
11 they had the right to do, exclusively, as of that date, they  
12 had to use commercially reasonable efforts to avoid material  
13 disruption?

14 THE COURT: Basically, you want me to take a leap  
15 from the fact -- or your argument that it is a fact that  
16 they did not use commercially reasonable methods to sell the  
17 stock, and, therefore, they will not use commercially  
18 reasonable methods to sell the ranch and to sell the boat,  
19 correct?

20 MR. McCONN: No, Your Honor. Respectfully, it's a  
21 little different than that. And I'm sorry I haven't  
22 articulated it better. What we're asking Your Honor to do  
23 is to find that we have a likelihood of success on our  
24 commercially reasonableness claims.

25 THE COURT: Hold on. There's a feedback for some



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1 reason. Try again, please.

2 MR. McCONN: Sure. Thank you, Your Honor.

3 So what we are asking is that you find that we have  
4 a likelihood of success on the merits of our claim, that  
5 they breached their duty of commercial reasonableness as  
6 to how they disposed of the Tellurian stock. And had they  
7 done it commercially reasonably -- what we think we have  
8 previewed to the Court and the evidence that we put before  
9 you is that had they done it commercially reasonably, they  
10 would have used the stock to dispose of the entire debt.

11 And so -- and once they do that, once we use  
12 commercially reasonable efforts to sell the stock and  
13 dispose of the entire debt, they have no further right to  
14 foreclose on the ranch or the company or the sailboat. And  
15 we have a declaratory judgment claim to that effect, or  
16 action to that effect, Your Honor, in our first Amended  
17 Complaint.

18 And so that is what we're asking the Court today to  
19 find. That there is a likelihood of success on the merits  
20 of those claims such that there is no further right to  
21 foreclose on this collateral, and, therefore, they should be  
22 enjoined from doing so until we get to a trial on the  
23 merits.

24 THE COURT: Got it. Thank you.

25 MR. McCONN: Sure. And so, Your Honor, just back

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1 to the commercial reasonableness claim. As I mentioned, the  
2 UCC Section 9-610 mentions time as one of the key elements  
3 of the commercial reasonableness inquiry. And if you go to  
4 comment 3 of that section, it says, you know, quoting  
5 here -- it's not the entire comment, but in relevant part.  
6 It says "that if a secured party holds collateral for a long  
7 period of time without disposing of it" -- excuse me -- "and  
8 if there is no good reason for not making a prompt  
9 disposition, the secured party may be determined not to have  
10 acted in a commercially reasonable manner." And that's  
11 exactly what we're saying here, Your Honor, based on the  
12 facts as I've laid them out to you.

13 But the Courts in New York have also construed this  
14 to mean that, as part of this inquiry the Court must  
15 consider the, quote, "reasonableness of choosing the date  
16 that was chosen." This is the *Highland CDO Opportunity*  
17 *Master Fund v. Citibank* case that we cite in our briefing.  
18 In fact, both sides cite that case.

19 THE COURT: Mm-hmm.

20 MR. McCONN: So it's clearly a requirement of this  
21 inquiry and it's clearly something that if they're going to  
22 get over the hurdle of commercial reasonableness, they have  
23 to show that the date that they chose or the time that they  
24 chose was commercially reasonable.

25 And just to kind of take you back to what we said a

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1 minute ago about how the Courts define "commercially  
2 reasonable," it has to be to the parties' mutual best  
3 advantage and has to be what a reasonable business would  
4 have done to maximize a return on the collateral.

5 So that means that they are required -- the  
6 defendants, when they are selling our stock -- Mr. Souki's  
7 Tellurian shares, when they're selling that, they have to  
8 sell it at a time when a reasonable business would have sold  
9 it to maximize the return on the collateral. And they just  
10 simply failed in that regard -- miserably failed in our  
11 view, Your Honor, for all of the reasons I've already  
12 stated. And I won't belabor the point.

13 THE COURT: And why isn't this -- I understand that  
14 the ranch is unique. I understand the boat is unique. But  
15 as to the stock, you know, why -- how could there be  
16 irreparable harm when, according to your own expert, all he  
17 has to do is a calculation. And can only be assessed -- I'm  
18 reading from his page 7. "Can only be assessed by  
19 performing statistical analysis of the daily order flow."  
20 But the bottom line with the report is that it can be  
21 calculated.

22 MR. McCONN: Your Honor, so we are -- we are not  
23 claiming irreparable harm as to the sale of the stock. We  
24 understand that -- the stock has already been sold. The  
25 horse is out of the barn, as we might say in Texas. We will

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1 have a claim for money damages, or at least as to why  
2 there's no deficiency left on the loan based on the sale of  
3 the stock. But the irreparable harm is going to come if  
4 they sell off this unique property; the ranch, the family  
5 business, and the sailboat. That's where the irreparable  
6 harm will come in. And that's why we are now moving,  
7 respectfully, for Your Honor to stop them from selling those  
8 things.

9 We didn't seek an Injunction to stop the sale of  
10 the shares, but we are now moving to enjoin the sale of  
11 three very, very unique pieces of property. And that's --  
12 that's where the irreparable harm would come in.

13 THE COURT: Okay. Thanks.

14 And who's speaking for the defendants? Mr.  
15 Cafasso, where are you?

16 MR. CAFASSO: Right here, Your Honor. Can you hear  
17 me?

18 THE COURT: It's a little muffled.

19 MR. CAFASSO: How about now?

20 THE COURT: And all other microphones should be  
21 off, please.

22 Go ahead.

23 MR. CAFASSO: And let me know, Your Honor, if you  
24 can not hear me.

25 THE COURT: We will.

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1 Won't we, Ms. Brown?

2 THE REPORTER: Yes.

3 MR. CAFASSO: So this motion, Your Honor, can and  
4 should be resolved on the plain language of binding loan  
5 agreements to which the sophisticated parties agreed and  
6 controlling New York law from both the Court of Appeals and  
7 the First Department. And respectfully, Your Honor, they  
8 can not establish any of the three requirements for the  
9 drastic remedy of a Preliminary Injunction.

10 And as you heard my adversaries just go through and  
11 you see it in their papers, they claim -- they try to claim  
12 that this motion raises a bunch of fact-intensive questions.  
13 That's just not true, Your Honor. The undisputed facts,  
14 which are all the Court needs to consider today, are as  
15 follows:

16 Mr. Souki, a sophisticated business person,  
17 borrowed approximately \$138 million pursuant to binding loan  
18 agreements in 2017 and 2018. Mr. Souki, and the other  
19 plaintiffs, pledged specific collateral to secure those  
20 loans and granted Defendants perfected security interests in  
21 that collateral.

22 Under the plain language of the loan agreements,  
23 Your Honor, Defendants are permitted to foreclose on that  
24 collateral at any time after a default, in their sole and  
25 absolute discretion.

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1           The contracts, as Mr. McConn admits, say nothing  
2           about waiting for certain milestones at Tellurian before  
3           they could sell the stock. Mr. Souki acknowledged in  
4           May 2020 that he was in default, and he has been in default  
5           ever since.

6           Defendants nonetheless agreed, Your Honor, to  
7           forebear through the outside date of March 30, 2021 -- and  
8           that's in so-called bridge agreements, which I would like to  
9           walk Your Honor through in a moment.

10          Within those agreements the parties agreed, among  
11          other things, that those written agreements could not be  
12          contradicted by any evidence of prior or contemporaneous  
13          oral promises and that there would not be any subsequent  
14          oral modifications to the agreements.

15          When those agreements expired, Your Honor, in March  
16          of 2021, even after that point, Defendants agreed to  
17          forebear for another two years before they exercised their  
18          contractual remedies.

19          On February 6th of this year, in 2023, Defendants  
20          exercised their rights to take possession of the Tellurian  
21          shares and began trading on February 8th. Later that same  
22          day, Mr. Souki's own lawyer, I believe it was Mr. McConn,  
23          sent an email where he estimated and agreed that Mr. Souki's  
24          outstanding debt obligation was \$124 million.

25          Now, there's some debate over the price amounts,

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1 Your Honor, but the point is that even after we took  
2 possession of the shares, Mr. Souki was still acknowledging  
3 that he owed us in excess of a hundred million dollars.

4 So what has happened since February 8th to bring us  
5 before Your Honor today? Mr. Souki still has not paid back  
6 anything. We sold the shares, as Mr. McConn alluded to,  
7 over a two-month period on the New York Stock Exchange. And  
8 by the time Defendant started selling the shares,  
9 Tellurian's stock price was in the midst of a precipitous 60  
10 percent decline. The stock was plummeting. As a result --

11 THE COURT: Well, they're saying that was your  
12 fault. They're saying you prompted that.

13 MR. CAFASSO: That was not our fault, Your Honor.

14 THE COURT: Okay.

15 MR. CAFASSO: Yes. I'll get to that. As a result  
16 of those sales, we recovered approximately \$35 million. We  
17 have not recovered anything else since, and sitting here  
18 today, Mr. Souki still owes almost a hundred million dollars  
19 on these loans. Those, Your Honor, are the undisputed and  
20 controlling facts, and everything else Plaintiffs say in  
21 their affidavits about supposed oral promises, negotiations,  
22 expectations, is legally of no moment.

23 And so while we very much disagree and dispute what  
24 they're saying -- we don't agree that that extra contractual  
25 evidence has anything to do with this motion. We're happy

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1 to engage on it at the appropriate time, but it's simply of  
2 no consequence here in light of governing agreements and New  
3 York law.

4 And to grant a Preliminary Injunction here, Your  
5 Honor, you need to find merit to Plaintiffs' claim, which is  
6 a rather remarkable claim. That his entire outstanding debt  
7 of a hundred million dollars should be deemed wiped out  
8 because, in hindsight, Defendants mistimed the selling of  
9 the Tellurian shares, either because they sold too early or  
10 they sold too late.

11 Now, if Your Honor agrees with us that that claim  
12 has no basis in either of the contracts or the law, then  
13 there's simply no basis to stop the foreclosures efforts as  
14 to the other pieces of the collateral.

15 So, Your Honor, I think that's sort of the kernel  
16 of what's going on here. All of his other arguments, at  
17 most would go to reduce the amount of debt owed, not come  
18 close to extinguishing it. And in all events, would be  
19 compensable by monetary damages.

20 And, Your Honor, Plaintiffs' position -- and to be  
21 charitable, is a little bit incoherent to me. On the one  
22 hand they say that we sold too early because of some  
23 supposed extra contractual promise not to sell the Tellurian  
24 shares until certain milestones were met. As Your Honor  
25 observed, that's nowhere in the contracts. The contracts



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1 say nothing about that.

2 But then they say, well, you also sold too late  
3 because you should have sold when the stock was trading at a  
4 brief three-year high in April 2022, even though the  
5 contracts say we can sell at any time. And as I'll get to,  
6 the law does not place the risk of a declining market on the  
7 defendants.

8 And telling, though, Your Honor, plaintiffs do not  
9 cite a single case where a Court has upheld a commercial  
10 reasonableness challenge, either to the timing or to the  
11 manner of the sale of pledged securities on a public stock  
12 exchange. And that's perhaps not surprising because the UCC  
13 establishes a safe harbor for sales of collateral on a  
14 recognized market.

15 In fact, Your Honor, the cases they do cite -- the  
16 *Highland CDO* case, your case in *D2 Mark*, the *Grace* case.  
17 They're so different from this case. None involve the  
18 disposition of securities on the New York Stock Exchange, or  
19 anything even remotely close to that. That they only serve  
20 to illustrate why Plaintiffs' claims here fail as a matter  
21 of law.

22 And, Your Honor, let's be clear about what happened  
23 here. And to use Your Honor's own decision in *D2 Mark*,  
24 we're not talking about the sale of a historic hotel in the  
25 middle of the COVID pandemic where I believe they gave

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1 36 days to make a market, 27 of which you couldn't access  
2 the property because of the lockdowns. That's not what's  
3 happening here, Your Honor. This case could not be more  
4 different. We're talking about sale of the common stock on  
5 the New York Stock Exchange over a period of two months.

6 And as an aside, although we could have, we did not  
7 try to foreclosure on any of the collateral during the  
8 pandemic. And I would submit to Your Honor, that a ruling  
9 in favor of Plaintiffs here would set bad precedent because  
10 it would penalize us for forbearing, and it would  
11 disincentivize lenders from working with their borrowers to  
12 avoid foreclosure. And I don't think that's the policy that  
13 New York should be adopting or promoting here.

14 At the end of the day, Your Honor, Plaintiffs are  
15 just using hindsight to cherrypick a few dates and argue  
16 that we could've timed the market better, but that's not the  
17 law, Your Honor.

18 The mere fact that a greater amount could've been  
19 obtained if we sold at a different time, that's not enough  
20 to establish commercial unreasonableness. That's straight  
21 from the UCC, Section 9-627A. And the case law makes clear  
22 that the investment and market risk of pledged securities  
23 rests with the borrower, not the lender.

24 And nothing in the law, Your Honor, puts that risk  
25 on us with the lenders. And I would point Your Honor to the

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1        *Bankers Trust* decision from the Court of Appeals, which is  
2        very analogous and makes clear that the sale of pledged  
3        collateral on a recognized market is immune from attack on  
4        the grounds of commercial reasonableness. And that as  
5        secured lenders, we were entitled to act according to our  
6        self-interest and discretion in disposing of the shares, and  
7        we were not required to follow Mr. Souki's recommendations  
8        as the borrower. That's straight from the Court of Appeals  
9        in the *Bankers Trust* decision.

10                THE COURT: They use the word "immune"? I don't  
11        think they use the word "immune." I'll do a search, but I  
12        don't think they used the word "immune."

13                MR. CAFASSO: Certainly, the First Department did,  
14        Your Honor, in *Citibank v. Solow*. They say you're immunized  
15        from attack on the grounds of commercial reasonableness if  
16        you sell pledged collateral through regular market channels.  
17        And the *Solow* decision from the First Department cites to  
18        *Bankers Trust* for that proposition.

19                And finally, Your Honor, the *Lane v. Bank One*  
20        decision, I would admit and tell you it addresses Kentucky  
21        law. It's from the Sixth Circuit. But it's perhaps the  
22        most factually analogous here because it involved a  
23        challenge both to the timing and sale -- timing and manner,  
24        rather, of pledged securities on the New York Stock  
25        Exchange. And the Court made several apposite holdings

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1 rejecting those challenges. And it's really on all fours  
2 here, Your Honor. So I would point Your Honor to that  
3 decision as well.

4 At the end of the day, Your Honor, there's simply  
5 no basis in the contracts or the law for the Court to second  
6 guess the timing of our sales. And again, Plaintiffs do not  
7 point to a single case where a Court has done so.

8 Your Honor, if you would indulge me, I'd like to  
9 walk you through just a few provisions of the bridge  
10 agreement because I think they're very important and they  
11 tend to foreclose Plaintiffs' arguments. And this would be  
12 in NYSCEF 89.

13 THE COURT: Sure.

14 MR. CAFASSO: It's the 2018 bridge agreement.

15 THE COURT: Okay.

16 MR. CAFASSO: Just by way of background, as Mr.  
17 McConn rightly said there were series of agreements that  
18 pertained to these loans. They're all described in the  
19 Metzger affidavit we submitted with our opposition.

20 THE COURT: You didn't -- I don't have anything  
21 about the commercial reasonableness of the sales of the  
22 other properties, the ranch and the boat. But anyway -- you  
23 know, all I have is an attorney affidavit, which is a little  
24 odd, but go ahead.

25 MR. CAFASSO: Well, part of the reason, yeah, Your

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1 Honor, is they didn't challenge that. Again, their whole  
2 argument before you today is that if we sold the shares at a  
3 different time, his entire debt would be extinguished and,  
4 therefore, we cannot foreclosure on those additional  
5 properties.

6 The bridge agreements, one was 2017, one was  
7 2018 -- they're identical, or at least they're identical in  
8 all relevant respects. So let me just focus Your Honor on  
9 the 2018 bridge agreement. I also point out that in Mr.  
10 Souki's -- in Plaintiffs' first Amended Complaint, they say  
11 this was heavily negotiated. They concede this was heavily  
12 negotiated. And let's look to see what those heavily  
13 negotiated terms were.

14 First of all, Mr. Souki admits that he's in  
15 default. If you go to page 1, Your Honor --

16 THE COURT: No, I do see that. I don't need to go  
17 anywhere. I get it. He's admitted it.

18 MR. CAFASSO: He's admitted it. He also waived any  
19 defense to the debt, at least as of May of 2022. And that's  
20 in Section 5.1 of the bridge agreement. And again, as  
21 recently as February of this year, they conceded that he  
22 still owed approximately \$128 million.

23 Section 4.3, Your Honor, is an important one.  
24 That's the enforcement protocol. And the enforcement  
25 protocol provides that at any time -- at any time, the

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1 administrative agent may exercise remedies against --  
2 foreclose upon or dispose of any of the collateral,  
3 including the shares, at the time and in such manner that  
4 the administrative agent determines, in its sole and  
5 absolute discretion, provided that they used commercially  
6 reasonable efforts not to materially disrupt the stock  
7 price.

8 So with respect to timing, Your Honor, all the  
9 contract says is that they could sell at any time. It makes  
10 clear that they could foreclose on these shares at any time.  
11 And notice, Your Honor, it says nothing about waiting until  
12 Tellurian reached certain milestones. You may think that's  
13 a pretty material term that these sophisticated parties in a  
14 heavily negotiated agreement would add. It's not in there,  
15 because that's not something the parties agreed so.

16 I'd also point out, Your Honor, that the  
17 commercially reasonable clause -- we agreed to use  
18 commercially reasonable efforts to avoid a material  
19 disruption. We did not agree never to cause a material  
20 disruption and I think that's an important distinction.

21 I would then direct Your Honor to Section 5.3,  
22 which says that each party agrees that in no event --

23 THE COURT: Wait. Hold on. So, really? That's  
24 such an interesting argument. So you agree to avoid a  
25 material disruption. You did not agree that you would not

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1 cause a material disruption. Is that your argument?

2 MR. CAFASSO: We agreed to use commercially  
3 reasonable efforts. Yes, Your Honor. I am not disputing  
4 that.

5 THE COURT: Okay. Wow.

6 MR. CAFASSO: Yes.

7 THE COURT: Interesting argument.

8 MR. CAFASSO: It's neither here nor there, as I'll  
9 get to.

10 THE COURT: Yeah. It's not a great argument,  
11 frankly.

12 MR. CAFASSO: I can tell.

13 Section 5.3, Your Honor. No course of dealings can  
14 cause a modification of the loan agreements; establish a  
15 custom or course of dealing; operate as a waiver, as so on.

16 Section 5.7, and I think this is particularly  
17 devastating to their claims, Your Honor. This is --

18 THE COURT: Okay. Go ahead.

19 MR. CAFASSO: -- oral agreement. It says that this  
20 agreement, the loan agreement and the other documents  
21 executed herewith are the final agreement between the  
22 parties and may not be contradicted by evidence of prior  
23 contemporaneous or unwritten oral agreements of the parties.  
24 There are no subsequent oral agreement between the parties.  
25 This is in both this bridge agreement and the 2017 bridge

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1 agreement, which are the final agreements between the  
2 parties.

3 And finally, Your Honor, Section 5.13, which has a  
4 release of all claims, at least as of the date of the bridge  
5 agreements. But what I want to point Your Honor to is the  
6 representation that the borrower -- and this is on the last  
7 page, page 9. Each guarantor consulted with and has been  
8 represented by legal counsel and disclaimed any reliance on  
9 representations, acts, or admissions.

10 THE COURT: Okay.

11 MR. CAFASSO: So with those governing contracts in  
12 mind, let me now walk you through what happened with the  
13 sale of the Tellurian shares. And to your point, Your  
14 Honor, we did not cause a material disruption in the stock  
15 price and let me show you. And again, their entire motion  
16 rises and falls on the argument that his entire debt should  
17 be deemed extinguished because we breached some duty of  
18 commercially reasonableness here.

19 First of all, Your Honor, let's be clear.  
20 Defendants would prefer not to have foreclosed on his  
21 collateral and that Mr. Souki would voluntarily pay his  
22 loans back. I think that would be in everybody's interest.  
23 But we are where we are.

24 And Defendants had every incentive to sell this  
25 stock at a high price and recover the full amount that they



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1        owed. It would be commercially economically irrational for  
2        them to take steps to impair their own collateral. It just  
3        doesn't make sense. And in retrospect with perfect  
4        hindsight, yes, I think Defendants would concede, we wish  
5        sold at a different time.

6                But the fact that we waited from foreclosing is  
7        actually a sign of Defendants' good faith, Your Honor, and  
8        not bad faith. And that's straight from the First  
9        Department's decision in the *Gramercy Twins* case, which we  
10       cite in our papers. That the length of time here -- more  
11       than three years of forbearance should not be used against  
12       Defendants. If anything, that tends to show Defendants'  
13       good faith.

14               But with respect to the Tellurian shares, Your  
15       Honor, here are the undisputed facts. We sold the shares.  
16       We didn't dump them on a single day. We sold them over the  
17       course of two months, from February 8th to April 5, 2023, on  
18       the New York Stock Exchange.

19               And if I could direct Your Honor to our opposition  
20       brief, which is NYSCEF 98, I believe there are three annexes  
21       attached to the back of the brief, which I'd like to walk  
22       Your Honor through, if I could.

23               THE COURT: Mm-hmm.

24               MR. CAFASSO: So, annex 1, Your Honor. This shows  
25       Tellurian's stock price over an approximately five-year

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1 period. And I think the takeaways from this, Your Honor --  
2 and this is all public information. This is not disputed.  
3 This stock was highly volatile, and it was mostly in a  
4 downward trajectory from when the loan agreements were  
5 entered into in 2017 and 2018. And if you look towards the  
6 right, it shows the time that we finally foreclosed on the  
7 shares. And that -- that is sort of blown up in annex 2.

8 So if you look to annex 2, we're showing the stock  
9 price movement from September of 2022 through April of 2023.  
10 And as you can see -- and I think this is a very important  
11 point, Your Honor, especially when you go back and look at  
12 *Bankers Trust* and the *Solow* decision from the First  
13 Department. This stock was plummeting. It had dropped  
14 60 percent by the time Defendants started to sell the shares  
15 on the New York Stock Exchange. And it was for that reason  
16 that Defendants decided that they had to sell. They were  
17 not clairvoyant. There was no way to know whether the stock  
18 was going to continue to fall or what was going to happen.  
19 And they did so, again, Your Honor, over a two-month period.

20 And finally, on annex 3, Your Honor, it shows the  
21 daily trading volume. Our sales were relatively small  
22 compared to the overall volume. One day it was about  
23 50 percent, but most days it was less than around 5 percent.  
24 And as of today, Your Honor, last time I checked at about  
25 12:00, the stock was trading at about 1.36, which is around

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1 the exact weighted average price when Defendants were  
2 selling it. So I don't think there's any reasonable  
3 argument that Defendants materially depressed the stock  
4 price here. This stock was in the midst of a precipitous  
5 decline and Defendants exercised their rights to sell the  
6 collateral.

7 Now, again, Your Honor, let me focus on the  
8 disposition of the Tellurian shares. And I'm happy to take  
9 any questions.

10 THE COURT: Do you think part of -- I understand  
11 the little yellow part of the annex 2, or annex 3 is your --  
12 the shares that you were selling. But isn't there --

13 MR. CAFASSO: Right.

14 THE COURT: -- added significance to the sale of  
15 those shares because they are the principal shares?

16 MR. CAFASSO: I think it is significant, Your  
17 Honor. And Mr. Souki, in an April 2019 proxy statement from  
18 Tellurian, it was disclosed to the market that he had  
19 pledged 25 million shares to secure a private loan. So the  
20 notion -- I know they say that we never disclosed at  
21 Tellurian that we made this loan. That was in their own  
22 proxy statement. I'm happy to send to this Court. The  
23 market knew that he had pledged these shares as collateral.

24 THE COURT: Mm-hmm.

25 MR. CAFASSO: Let me, Your Honor, focus first on

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1 the timing, and then I'll talk a little bit about the manner  
2 of these sales.

3 As to the timing -- and again, this is really --  
4 this is really the thrust of their argument, because if you  
5 disagree with them on the timing, the request for  
6 Preliminary Injunctive relief goes out the window because  
7 everything else goes to quantum of damages and can't -- and  
8 can be compensated by monetary damages.

9 Now on the one hand they say that we should have  
10 sold in April of 2022, but they also claim in the next  
11 breath, Your Honor, that we had some agreement never to sell  
12 until Tellurian reached some milestones, which hasn't  
13 happened, and to my knowledge may never happen.

14 The fact is, Your Honor, we delayed -- my clients  
15 delayed so long in foreclosing to try to work with Mr. Souki  
16 and give him additional opportunities to repay these loans  
17 on his own, despite having no contractual obligation to do  
18 so.

19 THE COURT: So I'm just going to interrupt you just  
20 because I heard you the first time or two that you -- you're  
21 kind of repeating.

22 MR. CAFASSO: I'm sorry.

23 THE COURT: So I'm just going to jump back over to  
24 Mr. McConn and we'll come back to you.

25 MR. CAFASSO: Thank you, Your Honor.

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1 THE COURT: Okay. Thanks.

2 Mr. McConn.

3 MR. McCONN: Thank you, Your Honor. Just very  
4 briefly.

5 Kind of taking these things in order, going back to  
6 the manner in which they sold the stock. If you go to  
7 page 17 of their opposition, NYSCEF Document 80, there's a  
8 nice little chart, a table, that shows --

9 THE COURT: 17?

10 MR. McCONN: Yes, Your Honor. Page 17 of 22.

11 THE COURT: Okay.

12 MR. McCONN: I'm sorry. This is Ms. Metzger's  
13 affirmation. I apologize.

14 THE COURT: Oh, okay.

15 MR. McCONN: But it's NYSCEF Number 80.

16 THE COURT: Got it. Yeah.

17 MR. McCONN: And what you'll see in the NYSCEF  
18 Number 80 is that, on page 17, if you look at the first few  
19 days that they were trading, overall volume was -- the first  
20 three days was 11 million; 11 million; 14 million. They  
21 sold almost 2 million; almost a million; and more than 2  
22 million. And they continued; a million the next day. So  
23 they are dumping literally millions of shares on the market  
24 for the first few days, and that's when the stock price  
25 starts to go down.

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1                   And what you see is at that point, they do start  
2                   selling -- well, a few days later, they do start selling;  
3                   300,000; 600,000; a few hundred thousand. So that's the  
4                   point at which they start selling what we might say is a  
5                   reasonable amount if this is a good time to sell. But by  
6                   that point, the damage is done.

7                   They have shocked the market by dumping literally  
8                   millions of his shares on the market -- the executive chair;  
9                   the largest shareholder of the company -- and he's having to  
10                  disclose this now. He's filing form 13Ds and F-4s, whatever  
11                  they are, with the SEC. And so now the market knows that  
12                  Charif Souki's shares are being dumped on the market. And  
13                  they know the volume that's being dumped on the market.

14                 So, yes, maybe at some point they got wind of what  
15                 they were doing, they realized what they had told them was  
16                 right, and so they slowed down. And they did drag it out to  
17                 April, but by that point, it's done.

18                 And if you follow down their list here, they show  
19                 you average price per day. What they don't show you is  
20                 where it opened, where it closed, where the low points were.  
21                 There were times during the trading where it got down below  
22                 a dollar. So they destroyed 50 percent of the value of this  
23                 stock by trading it. It was worth \$51 million the day they  
24                 grabbed it. They sold it for 35. So they absolutely  
25                 damaged the stock. And they did in a commercially

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1 unreasonable manner.

2 Now, Your Honor, this -- there was a recurring  
3 theme of -- from my colleague on the other side about how  
4 we're asking the Court to impose hindsight or clairvoyance.  
5 That is not the case. I mean, I could see a situation where  
6 if we came to the Court and said, "Oh, they should have sold  
7 it at a different time." You would say, "You can't require  
8 them to be clairvoyant, Mr. McConn. All they're required to  
9 do is be reasonable." We agree with that, but the facts of  
10 this case are very different.

11 The facts of this case show -- and again, they  
12 don't dispute this, that for months -- actually, more than a  
13 year -- they were repeatedly insisting that he sell. They  
14 were telling Mr. Souki "sell your stock."

15 THE COURT: That argument really doesn't work for  
16 me because, I mean, as you say, they had control of the  
17 stock at that point. You didn't. So who really cares what  
18 they're telling your client to do.

19 And what's really confounding about it, about your  
20 argument, is that you didn't turn around and say to them  
21 right away -- according to your argument and according to  
22 your papers, you waited for quite some time before bringing  
23 to their attention that they had a document that said they  
24 were in control of the shares. Not you. So that argument  
25 just doesn't really work.

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1 MR. McCONN: Well, let me -- thank you, Your Honor.  
2 Let me see if I can kind of clarify things. They required  
3 us to sign that document. They required us to say that they  
4 had exclusive control of the stock. Why they then turned  
5 around and started telling us, like, "You need" -- "You need  
6 to sell the stock" is unreasonable in and of itself. Why  
7 would they insist that we sell the stock that we can't sell,  
8 that they have exclusive rights to?

9 And even if they forgot, when they come to us in  
10 May and July of 2021 and say, "Sell the stock" and we say,  
11 "We can't sell it," why don't they then at that point say,  
12 "Oh, yeah. That's right. We're the ones who can sell it."

13 THE COURT: So you didn't even tell them at that  
14 point that "You all have the power to sell it," you know.  
15 Not that "We don't have the power to sell it. You have the  
16 power to sell it."

17 MR. McCONN: Well, we did --

18 THE COURT: You don't even say that. What you say  
19 is "We can't."

20 MR. McCONN: You're right. And I wasn't there  
21 for --

22 THE COURT: So that's a little -- not entirely  
23 truthful.

24 MR. McCONN: Well, Your Honor, so what my client  
25 told them was -- and I confess, maybe he didn't fully



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1 appreciate the contracts at the time -- but what he was  
2 telling them was "I can't sell and it's because I'm  
3 restricted by my board and by securities regulations," which  
4 he was. And they dispute that. But in his mind he was.

5 THE COURT: But now you're telling me the reason he  
6 couldn't do it wasn't because of the restriction on the  
7 stock market, but restrictions that they had on it.

8 MR. McCONN: It's all of that, Your Honor. It all  
9 adds up to mean he couldn't sell.

10 THE COURT: This is a really interesting argument  
11 that you have. I mean, this is really interesting. I love  
12 UCC cases, I really do. They're fascinating. And this is a  
13 really interesting argument. Interesting spin on it.

14 MR. McCONN: I've noted a lot of your UCC cases are  
15 getting ready for this so I assumed you would be interested  
16 in it.

17 I think the last thing I'll say about this is that,  
18 we -- a lot of the cases they cite, the defendants cite, say  
19 that, you know, "You can't really -- the Mr. Soukis of the  
20 world can't avail themselves of these kinds of claims if  
21 they never told the lender or the secured party to sell the  
22 collateral." That's a big point in their briefing.

23 And what Mr. Souki says in his supplemental  
24 affidavit is -- he repeatedly told them on multiple  
25 occasions that, "I can't sell. I'm restricted from selling.

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1 I don't have the right to sell. You sell." And at that  
2 point, they absolutely had the obligation. And he said that  
3 to them in late 2021 when the stock is trading upwards of  
4 almost \$5 a share.

5 THE COURT: The problem with that argument is that  
6 it contradicts your earlier argument that they have some  
7 sort of an agreement, an oral agreement, not to sell until  
8 certain milestones are achieved. So which is it? Because  
9 you have to choose one of these arguments. You can not have  
10 both of them.

11 MR. McCONN: Understood, Your Honor. And my  
12 response to that and I promise I'm trying to answer the  
13 question -- the response is they absolutely should have  
14 waited until after we achieved -- Tellurian achieved the  
15 milestones. That's what they committed to Mr. Souki  
16 repeatedly.

17 But they clearly don't think that they made that  
18 commitment, or they say it's not enforceable because it's  
19 not in writing. That's fine. If they are going to  
20 disregard the commitment they made, then they have to live  
21 by what New York law says and what these contracts say about  
22 commercial reasonableness.

23 If we're wrong about the commitment they made,  
24 shame on us. But that doesn't excuse them from the  
25 requirement to exercise commercial reasonableness as to

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1 time. The Courts are clear about that. And they did not.  
2 They absolutely did not use a reasonable time. This isn't  
3 about hindsight. This is about them repeatedly telling us  
4 to sell when it was reasonable, and they didn't do it.

5 THE COURT: Okay. All right. Thanks so much.

6 And, Mr. Cafasso, did you want to say anything  
7 else? Because I kind of cut you off.

8 MR. CAFASSO: That's perfectly fine, Your Honor.

9 THE COURT: You need speak up, though, because I  
10 can't hear you.

11 MR. CAFASSO: Thank you, Your Honor. I would just  
12 make two quick points.

13 THE COURT: Sure.

14 MR. CAFASSO: And I appreciate your indulgence.

15 The notion that he was restricted from selling and  
16 couldn't sell his stock, that exact argument, Your Honor,  
17 was presented to the Sixth Circuit in the *Lane* case. And I  
18 would direct Your Honor to footnote 8 where they consider  
19 and they reject that argument, saying that the  
20 particularized facts of the borrower in a situation is  
21 insufficient to alter the law and burden the lender with the  
22 responsibility of being an investor and advisor. And then  
23 they go on to make the obvious point that there are ways for  
24 insiders to sell stocks pursuant to 10b5 plans and the like.

25 And the last point I'd make, Your Honor, just

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1 looking at the equities here. Mr. Souki still owes my  
2 clients a hundred million dollars, and he's been in default  
3 for several years. And it just does not serve the public  
4 interest to permit a borrower to avoid their contractual  
5 obligations.

6 As Your Honor knows, the New York Courts are very  
7 clear and adamant in enforcing the plain terms of contracts  
8 between sophisticated parties. And as I said at the outset,  
9 I think a ruling in Plaintiffs' favor here really sets bad  
10 precedent because it disincentivizes and punishes lenders  
11 for trying to work with their borrowers.

12 And the reason we didn't sell the stock earlier,  
13 Your Honor, is we were trying to work cooperatively with Mr.  
14 Souki. That's in everybody's interest. And when that just  
15 turned out to be impossible, Defendants exercised the  
16 contractual rights to foreclose on the collateral.

17 And finally, Your Honor, a ruling in Plaintiffs'  
18 favor here would upend and really turn on its head the whole  
19 purpose of a secured lending. The whole purpose of secured  
20 lending is to provide a lender with the promise of repayment  
21 in the event the borrower defaults through the pledged  
22 collateral, which is exactly what this transaction was.

23 Thank you, Your Honor.

24 THE COURT: Okay. Thanks.

25 So, Ms. Brown, if you could mark the transcript for

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1 the Court's decision, which is that I'm going to deny the  
2 motion for the Preliminary Injunction, not because -- it's a  
3 fascinating argument. It's really a good argument, however,  
4 you have to establish likelihood of success. You have  
5 breach of contract, a DJ, breach of good faith of fair  
6 dealing which is also a breach of contract, fraud, tortious  
7 interference. And really we're all focusing on the sale of  
8 the shares on the New York Stock Exchange. And I don't  
9 know, the plaintiffs might be able to show that there was a  
10 dumping that happened on, you know, the first two or three  
11 days and they might be able to show that. But I am not  
12 satisfied that the plaintiffs have established a likelihood  
13 of success on the merits.

14 Their affidavit of their own expert says, "Well,  
15 you know, if am given the opportunity to write an expert  
16 report I might be able to show" -- or "I will," actually.  
17 He doesn't say "I might." I will show, he says, that, you  
18 know, they depressed the stock, they dumped it, and so  
19 forth. But it's not -- I don't have what I need to make  
20 that decision to find that it was commercially reasonable,  
21 or commercially unreasonable, as -- not as a matter of law,  
22 but as a matter of likelihood of success that the plaintiffs  
23 have pushed it over into -- not 50/50, but more, you know --  
24 that it's likely that they will succeed on that. And quite  
25 frankly, I can't make that conclusion based on this record.

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1                   Another strong factor militating against the  
2 Preliminary Injunction is the irreparable harm, and while --  
3 and this is where your argument is so interesting, Mr.  
4 McConn. The irreparable harm is the sale of these two  
5 precious properties, right? The ranch and the boat. And  
6 then, also, the other family stock in the family company  
7 too, I'm sure is very precious to them. But I am focusing  
8 on the sale of the shares about which you are saying was  
9 commercially unreasonable, and I just don't think that I can  
10 find that selling shares on the New York Stock Exchange over  
11 a two-month period, that it's commercially unreasonable.

12                   Having said that, I mean, you may very well be able  
13 to prove it with a good expert and, you know, a good expert  
14 report. You might. But you just don't have it for the  
15 purposes of an injunction today.

16                   Balance of the equities too -- I have to say that I  
17 -- you know, look, it's a commercial division, a mere  
18 Supreme Court. And, you know, we're here to, you know,  
19 enforce contracts. And I think Mr. Cafasso makes a very  
20 good argument about secured lenders needing to have some  
21 certainty that Courts are going to, you know, allow them to  
22 do what they do.

23                   I understand Mr. McConn's argument that, you know,  
24 lenders can not just do whatever they want and sell whenever  
25 they want and sell as much as they want, but that's not the

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1 record that I have here. And I agree that it's not  
2 unmitigated, I don't think is the right word. But they  
3 can't just do anything they want. That's true. They have  
4 to do it in a commercially reasonable way. But I just don't  
5 have before me enough facts to find that it is more  
6 likelihood -- likely than not that it was commercially  
7 unreasonable to sell the stock when they sold it.

8 And I will say, there is a certain amount of  
9 clairvoyance in this argument that the plaintiff is making.  
10 But there's no written -- there's no written agreement  
11 admittedly, as to the holding off on selling. So that part  
12 of the plaintiffs' argument doesn't work because, you know,  
13 you can't say that they didn't sell soon enough because  
14 you're saying that they weren't supposed to sell until  
15 certain milestones were met, number one.

16 Number two, we do want to encourage parties to work  
17 together not to foreclose and to, you know, give some time.  
18 And I can't punish -- which is what it would be to issue a  
19 Preliminary Injunction at this time.

20 And then the second half of this timing argument --  
21 well, then they sold. You know, they sold too late -- also  
22 doesn't work, again because you don't want to punish lenders  
23 for working or trying to work with parties. But you  
24 definitely can't -- under this framework of this argument,  
25 you can not say that they should have sold sooner when your

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1 argument is that they couldn't sell sooner because they made  
2 an agreement to wait for milestones. I mean, that just  
3 doesn't work.

4 Anyway, unfortunately, when the defendant lender  
5 sees the market going down -- and according to the documents  
6 I have, the market was going down. Oh, and just for the  
7 record, if you attach -- this is not in the rules, actually  
8 it might be in my rules. If you attach instead of annexes  
9 to the memos of law, it's a lot easier to use them if you  
10 file them separately. Just a thought.

11 Anyway, the defendants are not required to wait for  
12 a market to go down further. I mean, they can't -- it's not  
13 unreasonable to start selling when you see the market  
14 starting to go down and you're worried about it tanking and  
15 then you wouldn't have anything.

16 Okay. So that's the Court's decision. You can get  
17 the transcript for me, Mr. McConn, and I will so order it.  
18 You will have an appealable order. As soon I get that from  
19 you, we will issue a one-page decision that just says it was  
20 decided on the record.

21 Where are we with the answer or motion to -- sorry,  
22 I didn't look at that part of this.

23 MR. CAFASSO: I believe we have 28 days, Your  
24 Honor, to file our motion to dismiss, which we intend to do.

25 THE COURT: Okay. Okay. Well, then I guess I'll



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1 see you when you argue that.

2 MR. McCONN: Your Honor, may I -- I know you made  
3 your ruling. I do want to make -- ask one question. We  
4 also had a motion for expedited discovery.

5 THE COURT: Oh, yeah. Absolutely no reason for  
6 that. Sorry.

7 MR. McCONN: Okay.

8 THE COURT: I mean, I have the record that I have.

9 MR. McCONN: And that's why I raised it, Your  
10 Honor. I thought, with discovery, I think we will be able  
11 to develop the record in a way that could change your mind.

12 THE COURT: And you will -- oh, here it is. Sorry.  
13 No expedited discovery. You haven't demonstrate that such  
14 discovery is necessary for the Preliminary Injunction and,  
15 indeed, you have all the information. That's what's so  
16 extraordinary about this argument. You know, it's all  
17 within your client's -- it's his information. So --

18 MR. McCONN: Respectfully --

19 THE COURT: -- I don't see it. Well, a) it's  
20 within his control, and, b) the other part is, you know,  
21 it's public information about when it was sold, how it was  
22 sold. And the rest of it just goes to the rest of the case.  
23 I mean, it's just regular old discovery. So I don't see how  
24 that would have helped, given your argument which is based  
25 on them tanking the price. I mean, it's all based on, you

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1 know, your expert, and what -- and the little charts and  
2 things. So I have that. I don't really need anything else.  
3 So yeah, that's denied too.

4 So thanks so much. Have a nice day. And please  
5 get me the transcript.

6 \* \* \*

7  
8 The foregoing is hereby certified to be a true and  
9 accurate transcript of the proceedings as transcribed from  
10 the stenographic notes.

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13 ANNE BROWN, RPR  
14 SENIOR COURT REPORTER  
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